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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,221	10/09/2001	Anil G. Rijhsinghani	ENB-018(E00378/7949)	7430

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EXAMINER	
HYUN, SOON D	

ART UNIT	PAPER NUMBER
2616	

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/973,221	RIJHSINGHANI ET AL.	
	Examiner	Art Unit	
	Soon D. Hyun	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 October 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *jan 09,2002*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 6 and 8 are objected to because of the following informalities:

In line 1 of each claim, "the claim 1" should be changed to – claim 2 --.

Appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 2-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,301,224. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting

because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Moreover, omission of a reference element whose is not needed would be obvious tone of ordinary skill in the art. It well settled that the omission of an element and its functions is an obvious expedient if the remaining elements perform the same function as before168 USPQ 375 (Bd..App. 1969). In re Karlson, 163 USPQ 184 (CCPA 1963). Also note Ex parte Rainu.

Regarding claims 2-20, claims 1, 3, 5, 10, 11, 12, 13, 16, or 19 of Patent No. 6,301,224 encompass the limitations of claims 2-20 of the instant application.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 15 is rejected under 35 U.S.C. 112, first paragraph, because the claim has a single means, where a means recitation does not appear in combination with another recited element of means (see MPEP 2164.08(a)).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 2-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhaskaran (U.S. Patent No. 5,963,540) in view of Gerardin et al (U.S. Patent No. 6,222,822).

Regarding claim 2, 8, 9, and 15, Bhaskaran discloses a method of handling traffic on a network node (a switch 302 in FIG. 3) to receive, periodically, successive hello communications, the traffic including data communications, and the method comprising the steps of:

detecting that a first number of successive hello communications (a predetermined number of consecutive pings) have not been received at the network node (col. 5, lines 19-20), i.e., when the switch fails to receive the predetermined number of consecutive pings from a router (202 in FIG. 3), the switch detects that the router is not in operation and the switch is operative to transmit traffic addressed to the router via a redundant transmission path (208 in Fig. 3) instead of a primary transmission path (206 in Fig. 3).

However, Bhaskaran does not explicitly teach the step of directing the switch to drop at least a portion of the traffic at the network node in response to the detecting step.

Gerardin et al (Gerardin) discloses that a packet switch discards data because of congestion in the switch (col. 9, lines 45-52 and FIG. 5). Those of skill in the art would have been motivated by Gerardin to discard traffic when the switch (302) of Bhaskaran

has congestion to the redundant path (208) to reduce the congestion. Therefore, it would have been obvious to one having ordinary skill in the art to incorporate traffic discarding mechanism into the switch of Bhaskaran to reduce congestion.

Regarding claims 3, 10, and 16, Bhaskaran teaches that the predetermined number of ping are communicated (col. 5, lines 19-20), i.e., the ping communications are not dropped even if the switch has congestion.

Regarding claims 4, 11, and 17, it would have been obvious to one having ordinary skill in the art to drop all the data communications according to the congestion status of the switch to reduce the congestion.

Regarding claim 5, and 12, refer to the discussion for claim 2. Bhaskaran further teaches that a first user is a server (106 in FIG. 3) and a second user is a client connected to a network (102 in FIG. 3), col. 5, lines 42-61.

Regarding claims 6, 13, and 19, Bhaskaran does not explicitly teach that the switch is operative to receive a threshold amount of traffic for the discarding of traffic.

Gerardin teaches a queue threshold for discarding data (col. 9, lines 54-62). Those of skill in the art would have been motivated by Gerardin to use queue threshold to reduce congestion.

Therefore, it would have been obvious to one having ordinary skill in the art to incorporate a traffic threshold into Bhaskaran to reduce congestion.

Regarding claims 7, and 14, refer to the discussion for claims 5 and 6.

Allowable Subject Matter

7. Claims 18 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and the double patenting is overcome.

8. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach the first number and the second number of consecutive hello communications for traffic control ad recited in the claims.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D. Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris H. To can be reached on 571-272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Hyun
04/05/2006

PATENT EXAMINER, 2616